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**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE**

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ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN SOUTH AFRICA

--April 1, 2005 through March 31, 2006 --

This report is submitted by the Delegation of South Africa to the Competition Committee FOR DISCUSSION at its forthcoming meeting to be held on 18-19 October 2006.

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Foreword

1. The South African competition authorities comprise three independent agencies. These are the **Competition Commission**, the body responsible for investigation, prosecution and advocacy; the **Competition Tribunal** which is the decision making body in respect of all large mergers and all restrictive practices. It acts as an appeal body from decisions of the Commission in respect of small and intermediate mergers and exemptions; the **Competition Appeal Court** which is a division of the High Court and on which sitting judges in the various provincial divisions of the High Court are designated to serve. This report largely comprises a report of the activities of the Commission and Tribunal and, where indicated, the Competition Appeal Court.

2. This report covers the period from **01 April 2005 to 31 March 2006**.

1. Changes to competition laws and policies, proposed or adopted

1.1 Summary of new legal provisions of competition law and related legislation

3. There have been no amendments to the Competition Act or to the regulations under the Act in the period under review. There has however been new legislation in the telecommunications sector that potentially impacts on the practice of competition law. In terms of the Electronic Communications Act, which came into force in 2006, the telecommunications regulator is given enhanced powers over competition in this sector. Certain provisions in the new Act suggest that the effect of these new powers would be to immunise the sector from regulation in terms of the Competition Act. This however will remain unclear until courts have interpreted whether the new sections oust the Competition authorities or maintain a regime of concurrent jurisdiction, which is the present position. This reflects ongoing problems in settling jurisdictional boundaries between the competition authorities and the sector regulators.

1.2 Other relevant measures, including new guidelines:

N/A

1.3 Government proposals for new legislation

4. Government policy requires that all public institutions be reviewed every five years. The Government is currently reviewing competition policy and institutions. Government is concerned that conduct on the part of dominant firms producing key intermediate products – with steel and basic chemical products most frequently mentioned - is inhibiting the development of labour intensive downstream industries. Amendments to the Competition Act that would better enable the competition authorities to apprehend and remedy this alleged abusive conduct – the structural roots of which are thought to pre-date the Competition Act - is currently under consideration.

2. Enforcement of competition laws and policies

2.1 Action against anticompetitive practices, including agreements and abuses of dominant positions

2.1.1 Summary of activities of the Competition Commission

5. During the year under review the Commission received 105 complaints and initiated a further 4 investigations. In comparison to the previous year, complaints received in the year under review increased by 28%. 39 cases were carried over from the previous year. 84 cases were finalised. Of these, 10 were

referred to the Tribunal and 74 cases were non-referrals. Non-referrals generally occur when the Commission, after conducting an initial investigation of the complaint, concludes that the conduct alleged does not fall foul of the provisions of the Competition Act or that there is insufficient evidence to support a successful prosecution. In the event of non-referral, the complainant is entitled to place the complaint before the Tribunal for adjudication.

**Table 1. Prohibited Practices:
2005/06, 2004/05, 2003/04, 2002/03**

| | 2005/06 | 2004/05 | 2003/04 | 2002/03 |
|-------------------------------------|---------|---------|---------|---------|
| Total number of complaints received | 105 | 82 | 94 | 82 |
| Total number initiated cases | 4 | 12 | 1 | 7 |
| Total number of investigated cases | 134 | 135 | 141 | 152 |
| Total number finalised | 84 | 63 | 100 | 81 |
| Total number non-referrals | 74 | 51 | 89 | 81 |
| Total number of referred | 10 | 8 | 11 | - |

Table 2. Types of Complaints

| Provisions of the Act | Number received | Number resolved | Number under investigation |
|---|-----------------|-----------------|----------------------------|
| Horizontal restrictive practices (section 4) | 12 | 7 | 5 |
| Vertical restrictive practices (section 5) | 18 | 9 | 9 |
| Abuse of dominance (sections 8 & 9) | 42 | 28 | 14 |
| Investigations in respect of more than one section of the Act | 56 | 27 | 29 |
| No jurisdiction | 16 | 9 | - |

6. Nine cases were resolved by way of a consent order that was later confirmed by the Tribunal, and one case was adjudicated after a full hearing before the Tribunal.

7. The Commission participated in four cases before the Competition Appeal Court, and two cases before the High Court

8. Enforcement cases generated administrative penalties totalling approximately USD12 million.

2.2 Summary of activities of the Competition Tribunal

9. Number of restrictive practices cases the Tribunal dealt with from April 2005 – March 2006:

- Complaint referrals from the Commission
The Tribunal had on its roll in this period 11 cases from the Commission, of which 10 were heard and decided.
- Complaint referrals from the complainant

The Tribunal had on its roll in this period 8 cases by complainant, 4 of which were withdrawn, 1 was heard and is still proceeding and 3 are still pending.

- Applications for interim relief

The Tribunal had on its roll in this period 7 applications for interim relief, 2 cases were withdrawn and 3 were heard and decided, 2 are still pending.

2.3 Description of significant cases, including those with international implications

Competition Commission vs USA Citrus Alliance (Alliance)

10. This case involved SA citrus fruit destined for the United States (US) market. Diversified Citrus Marketing Inc lodged a complaint to the Commission against Alliance for indirectly fixing the fruit's selling price, imposing restrictions on the volume of fruit exported by SA producers to the US market and imposing other trading conditions. Alliance justified its conduct by presenting evidence that SA producers could not compete individually in the US market. They admitted that their conduct was in contravention of the Competition Act and the matter was settled by way of a consent order and an administrative penalty of R 400 000 was imposed. Alliance was encouraged to consider an exemption application on the basis of promotion of exports and this has since been granted (Promotion of exports is one of the grounds for the exemption from certain provisions of the Act).

Competition Commission vs Sasol Chemical Industries Ltd (SCI); Yara South Africa (Pty) Ltd (Yara) and Omnia Fertiliser Limited (Omnia)

11. Nutri-Flo lodged a complaint with the Commission alleging that SCI was abusing its dominance in the fertiliser markets by charging excessive prices for certain fertilisers. They also alleged that SCI were colluding to fix the prices of certain fertilisers with its competitors such as Yara and Omnia.

12. Both SCI and Omnia manufacture and supply fertiliser. SCI is the dominant producer of the basic raw materials and intermediates needed for nitrogen-based fertilisers, whilst Nutri-Flo is a small fertiliser firm. Nutri-Flo sources most of its raw materials and straight fertilisers from SCI, and competes with SCI, Omnia and Yara in the retail market.

13. The Commission's investigations confirmed that SCI dominates the market for straight nitrogen-based fertilisers such as Ammonia, ANS and LAN and that they were abusing this dominance by charging excessive prices. The Commission also found that there was a coordinated practice and / or understanding between SCI, Omnia and Yara whereby the price of fertilisers was fixed and maintained at certain levels. The Commission referred this complaint to the Competition Tribunal for adjudication. The matter is still pending.

Competition Commission and Motor Vehicle Dealers and Manufactures / Importers

14. Seven consent agreements involving manufacturers / importers of new motor vehicles and some of their dealers were referred to and confirmed by the Tribunal. In all seven cases the Tribunal confirmed the agreements as consent orders. The matters involved two types of contraventions, namely:

- Restrictive vertical practices

15. Complaints were made against the following SA companies: General Motors, Daimler Chrysler, Nissan, Volkswagen and Citroën. They were accused of limiting the discounting ability of the various dealership bodies and /or prescribing minimum resale prices for their vehicles. In a nutshell, these manufacturers limited the discounts that the dealers could give their customers, thus limiting price

competition between the dealers. The Commission also investigated the various franchise / dealership agreements between the manufacturers and the dealers. These agreements contained a number of restrictive clauses such as imposing a ban on 'out of area sales', on 'on-selling', on exporting as well as on advertising.

16. The Commission entered into consent agreements with five of the implicated firms. They each agreed to pay administrative penalties ranging from R150 000 to R12-million. The firms also agreed to implement compliance programmes which would, in some instances, include a review of the relevant franchise and / or dealership agreements.

- Restrictive horizontal practices

17. Complaints were also lodged against the South African dealership bodies of Subaru, Volkswagen and BMW and stemmed from allegations that they fixed the selling prices of their vehicles. The Commission found that dealers, and more specifically the respective dealer councils, were involved in the fixing of prices and/or trading conditions. The Subaru and BMW dealers agreed to pay administrative penalties of R500 000 and R8-million respectively.

Competition Commission vs South African Airways

18. On the 28th July 2005 the Tribunal imposed the largest administrative penalty so far under the Competition Act when it ordered SAA to pay R45 million (USD6,5m) for abusing its dominant position in the domestic air travel market. The Commission had argued in its complaint referral that SAA had engaged in conduct that constituted an abuse of dominance prohibited under Section 8(d)(i) of the Act.

19. The abuse of dominance concerned two of SAA's incentive schemes for travel agents. One of these is known as the override scheme in terms of which travel arrangements are paid a bonus commission in addition to their basic commission on conditions that they achieve sales above a specified target. SAA is not alone in operating such an override scheme: indeed the complainant (Nationwide Airlines) and other domestic airlines operate their own schemes which are common in the airline industry. However these other firms are – in contrast with SAA – not dominant in the air travel market. In any event it would be impossible for firms without a large market share to attempt to utilise a loyalty scheme of this nature to exclude rivals. Although the SAA scheme had been in operation since the 1980s, the evidence showed that in late 1999 SAA made the override benefits more 'challenging' for the travel agents to secure. First, SAA reduced the basis commission from 9% to 7%. It then raised the target levels at which agents became entitled to the additional forms of compensation known as 'override' and 'incremental' commissions.

20. The Tribunal found that the schemes contravened Section 8(d)(i) of the Act which prohibits dominant firms from 'requiring or inducing a supplier or customer to not deal with a competitor' unless the firm concerned can show technological, efficiency or other pro-competitive gains which outweigh the anti-competitive effects of its act.

21. In considering the appropriate remedy the Tribunal detailed the principles that it had used in weighting the factors to be taken into account when determining the size of an administrative penalty. Based on these weightings the Tribunal found that the penalty should be set at 2,25% of SAA's affected turnover and an administrative penalty of R45 million was accordingly imposed.

2.2 Mergers and acquisitions

22. We are required to determine whether a merger will lead to a substantial lessening or prevention of competition. We are also required to evaluate the transactions impact on a number of specified public

interest issues, including the effect of the merger on employment, on the participation in the economy of historically disadvantaged South Africans and SMMEs, and on international competitiveness.

23. During the year under review, 408 mergers were notified with the Commission: 97 were large mergers, 300 intermediate and 11 small¹. This is an increase of 31% from the previous year and is consistent with international trends. The increased merger activity can be attributed mainly to a positive economic environment stimulating company growth and expansion. Despite this significant increase the average Commission's turnaround in finalising all merger cases remains approximately 30 days.

2.2.1 Statistics on number, size and type of mergers notified and/or controlled under competition laws

Table 3. Statistics on Size

| | Large | Intermediate | Small | Total |
|-----------------------------|-------|--------------|-------|-------|
| Cases notified | 97 | 300 | 11 | 408 |
| Cases finalised | 101 | 284 | 9 | 394 |
| Withdrawn/ no jurisdiction | 2 | 5 | 1 | 8 |
| Approved without conditions | 91 | 277 | 8 | 376 |
| Approved with conditions | 7 | 7 | 0 | 14 |
| Prohibited | 3 | 0 | 1 | 4 |

Table 4. Types of Mergers

| Type of merger | Total | % |
|--------------------|-------|--------|
| Horizontal | 214 | 54.31 |
| Vertical | 42 | 10.66 |
| Conglomerate | 103 | 26.14 |
| Management Buy-out | 35 | 8.88 |
| | 394 | 100.00 |

2.2.2 Summary of significant cases

Large Mergers

Sasol Limited, Sasol Oil (Pty) Ltd (Sasol) vs Engen Limited Petronas International Corporation Limited (Engen)

24. Historically, South Africa's petroleum industry developed in response to economic sanctions against apartheid. The apartheid government invested in initiatives to find alternative sources of fuel supply and Sasol was established. Then a state owned enterprise, Sasol manufactured fuel using mainly low-grade coal; today it is a privately owned company at the cutting edge of fuel-from-coal technology.

¹ The size of a merger is determined by the annual turnover and/ or net asset value of the merging parties. The Minister of Trade and Industry, after consultation with the Commissioner of the Competition Commission determines thresholds for the classification and the thresholds have statutory force in terms of the Competition Act.

25. SA's fuel refiners, other than Sasol and the state-owned PetroSA Ltd (PetroSA), produce fuel from crude oil, which is refined in the coastal regions of the country. Natref, a joint venture between Sasol and Total, is the only inland refiner that produces oil from crude oil – there is a pipeline dedicated to supplying this inland refinery with its crude oil requirement. Sasol's oil from coal refineries are also based inland adjacent both to the coal fields and the largest retail market. Owing, in part, to the high price of crude oil, the oil refineries are relatively high cost producers, while Sasol's inland coal-to-fuel refinery is the lowest cost producer. The economic hub of South Africa - where the biggest demand for fuel is – is the inland region (the area that includes Johannesburg), giving Sasol's refineries a locational advantage over its competitors.

26. With the exception of the small state owned PetroSA, all the major oil companies operating in South Africa are vertically integrated. Up until 2003, a government sanctioned agreement between Sasol and the other oil companies limited Sasol to a very small share of the retail market. As part of this arrangement, the other oil companies were required to utilise Sasol's refined product for their inland retail markets, that is the other oil companies were limited in their ability to utilise their own coastal refined product in the inland. This arrangement – essentially a market allocating and price fixing cartel – was terminated at Sasol's behest in 2003. Since then Sasol has been engaged in a service station growth strategy, both through organic growth and acquisitions. Sasol endeavoured to extend significantly its downstream market share through the acquisition of Engen, the largest retailer of fuel products in South Africa.

27. The retail price of petrol is regulated, while the diesel price is regulated at wholesale level. The prices are capped by reference to the Basic Fuel Price, an import parity equivalent. Government has committed itself to a process of 'managed deregulation' of the industry.

28. The Tribunal found that the merged entity, combining the largest inland refiner and the largest national (and inland) retailer of white fuels in the country, would enjoy a near monopoly of inland refinery capacity and would have a considerable market share in the inland retail market. Noting that the logistical constraints impeding the ability of the competitors to bring refined product from the coast to the inland region, rendered the other oil companies dependent on Sasol for the supply of inland product, the Tribunal found a likelihood of input foreclosure post-merger and so prohibited the transaction. The Tribunal held that it was quite conceivable and highly likely that the battle between the oil companies would not take the form of an all-out foreclosure, provided that the merged entity's competitors accepted its price aspirations and co-operated. That is, the merger laid the basis for the formation of a reconstituted cartel with Sasol the dominant member of that cartel. In short the merger would foreclose the benefits of impending deregulation of the retail petrol price through a re-cartelisation of the market under the merged entity's leadership to the ultimate detriment of consumers. The Tribunal held further that Sasol was, in the absence of the merger, capable of vigorously competing for market share at retail level.

AP Moller-Maersk (Maersk) / Royal P&O Nedlloyd N V (PONL)

29. The merging parties are both involved in the containerised shipping services market and in respect of five trade routes would have had combined market shares in excess of 35%.

30. The Commission considered the possibility of new entrants into the market and found that barriers to entry were high due in part to existing agreements on industry trading conditions and in part to the high costs involved in entering the market. However, despite high entry barriers, there have been new entrants in the SA / Middle East and SA / Far East trade routes. There have been no new entrants in the SA / Europe trade route due to constraints in our ports which are relatively small and shallow and cannot accommodate certain large vessels. Slots are readily available in the SA / North America trade route and the discontinuation of an agreement has enhanced competition in SA.

31. The Commission concluded that, with the exception of the SA / Europe route where there are few suppliers, the proposed transaction was unlikely to substantially prevent or lessen competition on any of the trade routes. It recommended to the Tribunal that the proposed merger be approved subject to conditions. These conditions would ensure that competition in the market would remain, as the market structure would be corrected and the likely effect of the merger on producers and consumers would be neutralised. These conditions required the divestiture of PONL's assets as well as all rights and obligations to its shipping liner activities on the SA / Europe and SA / North America routes. The Tribunal conditionally approved the merger.

Tiger Brands Limited (Tiger) / Newco and Ashton Canning Company (Pty) Ltd (Ashton)

32. The Commission found the merging parties market shares for national canned deciduous fruit would increase to 68% and to 50% of the fruit puree markets. Although the Commission found that these market shares led to competition concerns, it found that there were pro-competitive efficiencies that outweighed competition concerns. The Commission's investigation also revealed that the transaction would have a significantly negative effect on the public interest as it would result in 45 permanent workers and approximately 1 000 seasonal workers losing their jobs. Both companies operate within an economically depressed area that is heavily dependent on the canning industry for employment, and the merging parties were a major employer.

33. The Commission recommended to the Tribunal that the transaction be approved subject to a condition that the merging parties set up a R2-million training fund that would be used to train the unemployed Ashton community at large as well as the merging parties' workers who would lose jobs as a result of the merger. Tribunal approved the merger subject to the recommended condition, but limited the availability of the training fund to those employees and seasonal workers directly affected by the merger.

Intermediate Mergers

Intelsat Holding Ltd (Intelsat) / PanAmSat Holding Corporation (PanAmSat)

34. The merging parties are two multi-national companies that both provide communications services via fixed satellite transponders by leasing this capacity to customers in South Africa and sub-Saharan Africa. These customers include telecommunications, media and entertainment companies as well as corporations and governments.

35. Intelsat operates 15 satellites and PanAmSat operates six satellites covering Sub-Saharan Africa. The transaction would result in the merged entity having an estimated 65% of the market share for the sale of satellite transponder capacity in Sub-Saharan Africa.

36. The Commission found that the transaction was likely to substantially prevent or lessen competition in an already concentrated market. However, within the next two years, four new satellites with significant capacity will be launched by the companies New Skies, Rascom, SES Astra and MEASAT and this will, in due course, constrain the market power of the merged entity.

37. The Commission approved the merger on condition that, for a period of two years, Intelsat and PanAmSat customers billed in South Africa may not be subjected to a price increase except for an inflation-related adjustment on 1 March 2007. This condition addresses the concern that in the two years before the new satellites are launched, the merged entity could have been in a position to increase prices to its customers.

Small Mergers

Eyethu Registrars (Pty) Ltd (Eyethu) / Ultra Registrars (Pty) Ltd (Ultra)

38. The Commission prohibited the small merger between Eyethu (a subsidiary of STRATE) and Ultra. Eyethu intended to acquire Ultra's entire business undertaking, which would comprise Ultra's transfer secretarial services.

39. Licensed by the Financial Services Board (FSB), STRATE is a self-regulatory organisation and is currently the only Central Securities Depository (CSD) in South Africa. Using its regulatory authority, STRATE can rightfully gain access to information from CSD Participants (CSDPs). Furthermore STRATE holds, and has access to, important shareholder information used by transfer secretaries in their ordinary course of business.

40. The Commission noted that STRATE and Ultra would stand in a vertical relationship in that STRATE controls shareholder information used by Ultra in compiling complete share registers for issuers. The only other competitor to Ultra is Computershare Ltd (Computershare), a CSDP regulated by STRATE. In this instance, STRATE was the only entity that had access to and could supply transfer secretaries with information essential to their business operations. It is unlikely that a new or second CSD will enter the market in which STRATE operates.

41. If approved, the merger would create structural links between STRATE and Ultra that would lead to the following competition concerns:

- Computershare is both a CSDP and a transfer secretary and STRATE could use its regulation of Computershare to obtain access to its proprietary information.
- STRATE could discriminate between Computershare and Ultra by regulating the type of shareholder information it supplied to them as well as the intervals at which this information would be provided.

42. The Commission found that in the highly concentrated transfer secretarial market, where Ultra is an effective contender, this transaction would most likely lead to a substantial prevention or lessening of competition.

43. The merging parties compete in a complex and dynamic industry that develops in unpredictable ways, and as such, the Commission could find no practical and effective remedy that would address the competitive detriments of the merger. STRATE has a structural advantage above any other relevant market provider and could therefore eliminate its competitors, even if it were not the most efficient supplier. STRATE's subsequent monopolisation could lead to higher prices, limited consumer choice and decreased market innovation. No significant public interest issues arose from the proposed transaction and it was concluded that any efficiencies that might have resulted were unlikely to outweigh the anti-competitive effects.

3. The role of competition authorities in the formulation and implementation of other policies, e.g. regulatory reform, trade and industrial policies

44. See section C(i) below 'Advocacy efforts: Policy and Legislation'

4. Resources of competition authorities

4.1 Competition Commission

4.1.1 Annual budget (in your currency and USD)

R 72 million (app. USD10m) in 2006 and R 66 million (app USD9,3m) in 2005

4.1.2 Number of employees (person-years)

Table 5. Commission Staff Statistics

| Divisions | Total economists | | Total lawyers | | Overall totals | |
|---------------------------|------------------|-----------|---------------|-----------|----------------|-----------|
| | 2006 | 2005 | 2006 | 2005 | 2006 | 2005 |
| Mergers & acquisitions | 4 | 6 | 3 | 3 | 7 | 9 |
| Enforcements & exemptions | 3 | 3 | 12 | 8 | 15 | 11 |
| Policy & research | 6 | 8 | 0 | 0 | 6 | 8 |
| Legal services | 0 | 0 | 7 | 5 | 7 | 5 |
| Commissioner's office | 0 | 0 | 1 | 2 | 1 | 2 |
| Compliance | 0 | 0 | 4 | 5 | 4 | 5 |
| TOTAL | 13 | 17 | 26 | 23 | 39 | 40 |
| % | 17% | 21% | 32% | 28% | 49% | 49% |

Table 6. Distribution of Commission Staff per Activity

| Activity | Number of employees | |
|-----------------------------|---------------------|------------|
| | March 2006 | March 2005 |
| Administration | 26 | 30 |
| Case-related administration | 6 | 4 |
| Case investigations | 19 | 20 |
| Education and information | 9 | 8 |
| Policy & research | 7 | 8 |
| Legal services | 6 | 4 |
| Executive committee | 6 | 6 |
| Planning and co-ordination | 1 | 2 |
| Total | 80 | 82 |

4.2 *Competition Tribunal*

4.2.1 *Annual budget*

R 13 852 000 (app USD1,8m)

4.2.2 *Number of employees (person years)*

45. The Tribunal is comprised of 10 members: seven part-time and three full-time members. Of the 10 members, two are economists and 8 are lawyers. The Tribunal has support staff of 13 people.

4.2.3 *Advocacy Efforts*

46. The main aim of advocacy is to create awareness about competition law and to positively influence the formulation of policy and legislation to promote consistency with competition policy and principles.

47. The focus of the Commission's advocacy programme is on key stakeholders, which include government, business, competition law practitioners, the economics profession, trade unions and other regulators.

Policy and Legislation

48. The Commission has had a number of interactions with government departments and other regulators where the Commission made submissions on proposed legislation, policy and sometimes conduct. The following are key submission made:

Electronic Communications Bill

49. The Commission submitted written comments on the Electronic Communications Bill, followed by an oral presentation to the Parliamentary Portfolio Committee on Communications. In its submission, the Commission welcomed the bill insofar as it aims at, amongst other things:

- promoting competition, investment and innovation in the communications sector
- facilitating the convergence of the telecommunications and broadcasting signal distribution sectors
- backing the development of public, community and commercial broadcasting services

50. As a model for regulating the communications sector, we strongly recommended a move away from concurrent jurisdiction between the competition authorities and ICASA. This model has made it difficult to rein in the anti-competitive behaviour of firms, particularly dominant enterprises in the telecommunications industry.

Electricity Regulation Bill

51. The Commission made submissions on the Electricity Regulation Bill to the Parliamentary Portfolio Committee on Minerals and Energy. Some of the objectives of the bill include:

- establishing a National Regulatory Framework for the Electricity Supply Industry (ESI)
- procuring electricity generating capacity from independent power producers

- registering and licensing, amongst others, generators, transmitters, distributors and traders in electricity

52. In its submissions the Commission highlighted that certain provisions of the Bill overlap with the provisions of the Competition Act. This perpetuated the then existing concurrent jurisdiction between competition authorities with the National Energy Regulator. The Commission submitted that this model of regulation has proven to be fraught with problems and should be avoided. Another area of concern that was indicated, with particular regard to tariff and service quality regulation, was that municipalities involved in reticulating electricity seemed to be excluded from the jurisdiction of the regulator. We proposed that government should, through regulation, seize the opportunity to deal with issues such as fragmented tariffs and the dilapidated state of infrastructure that bedevil the distribution sector.

Short Term Insurance Act

53. The Competition Act requires the Commission, amongst other things, to review legislation and report to the Minister of Trade and Industry concerning provisions that permit uncompetitive behaviour. Having been approached by consumers, the Commission made a report to the Minister regarding provisions of the Short Term Insurance Act that permitted banks to compel customers who took up bonds with them to make use of insurance companies that have been chosen by those banks. The Commission submitted that such provisions were anti-competitive as it had the effect of eliminating consumer choice. Legislative changes have since been made and the Commission's concerns have been addressed.

ICASA Discussion Document on Handset Subsidies

54. The Commission made written submissions on an ICASA Discussion Document on Handset Subsidies. The main purpose of this discussion document, and the subsequent hearings, was to solicit viewpoints from all interested stakeholders on how, if at all, handsets should be regulated in the future. The Commission's main recommendation was that ICASA should compel the three mobile network operators to offer, in addition to their present options, contracts at reduced call charges without free handsets. In Commission's view this would stimulate direct competition on call charges.

ICASA Discussion Document on Mobile Prices

55. Subsequent to that Discussion Document on Handset Subsidies ICASA published a Discussion Document on mobile prices. The main purpose of this discussion documents was to stimulate debate on the subject of the perceived high telecommunications prices in South Africa. In its submissions the Commission noted with concern the lack of effective competition in this sector, and made the following recommendations:

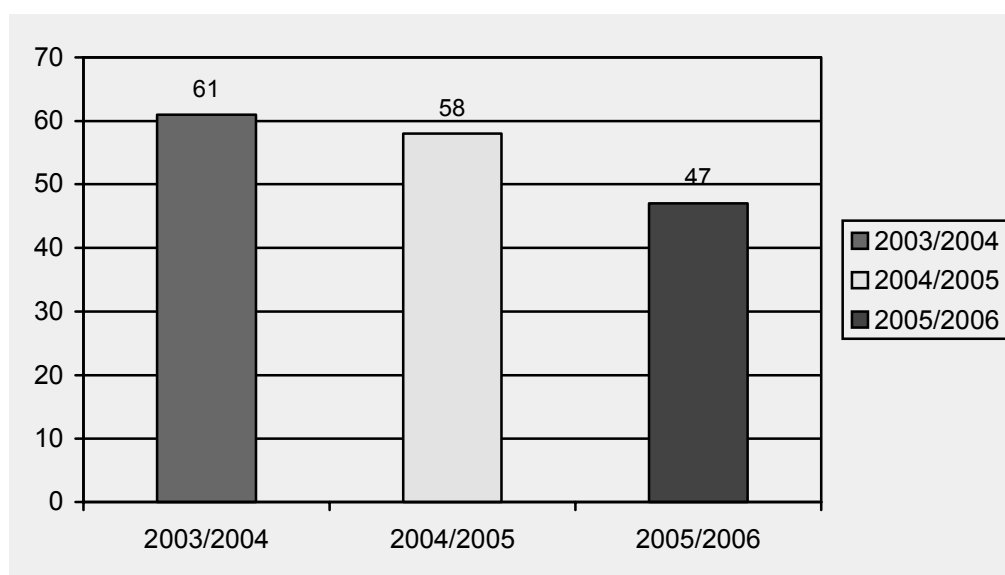
- license more players – this will have a direct impact on pricing behaviour;
- introduce number portability – this would stimulate competition by enabling consumers to switch easily;
- introduce mobile virtual network operators – allowing mobile phone operators to rent out their infrastructure to virtual mobile phone companies, this would increase the number of competitors;
- promote transparency – to enable consumers to make informed choices;

- closely scrutinise wholesale tariffs. Access and interconnection issues have a direct bearing on competition. The regulator should ensure that firms do not use interconnection and its costs as a strategy to limit competition.

Advisory Opinions

56. The Commission also promotes compliance by providing non-binding advisory opinions and clarification on the Competition Act.

Figure 1: Requests for Advisory Opinions Over Three Years.



Business and Practitioners

57. The Commission has made a number of presentations to organised business formations, individual firms and SMMEs to encourage voluntary compliance with the Competition Act. The Commission also assist firms in developing compliance programmes. As most of the contact between the competition authorities and business is through lawyers and economists, the Commission maintains relations with organised practitioners, and from time to time the Commission participates in the activities of these bodies.

Other Regulators

58. In the period under review the Commission held the position of the Chair of the South African Regulators' Forum, and published its quarterly newsletter, the Regulator. In addition, the Commission has concluded Memoranda of Understanding aimed at reducing jurisdictional conflicts with a number of other regulators.

Trade Unions

59. Trade unions are empowered through the Competition Act to participate in merger reviews and to this end we empower them through presentations and workshops, enabling them to actively participate in

merger transactions. In the year under review we undertook road shows to different provinces training union leaders on competition law and to develop a code of practice between trade unions, the legal practitioners and ourselves. Trade unions are increasingly participating in mergers and are starting to develop the capacity to engage merging parties and their legal practitioners on substantive competition concerns. In a number of mergers, we imposed conditions or recommended the imposition of conditions addressing employment concerns.

4.3 *Period covered by the above information:*

April 2005 to March 2006

5. *Summaries of or references to new reports and studies on competition policy issues*

5.1 *Research*

60. Our research takes the form of sector studies whereby economists from the policy and research division delve into specifically identified sectors. All our reports are publicly available and can be downloaded from our website. The following is a brief outline of this year's important research reports.

5.2 *Electricity*

61. This study looked at the electricity sector and presented an overview of:

- The distribution and reticulation of electricity in South Africa
- The reform process aimed at introducing Regional Electricity Distributors (REDs)
 - With regard to the implementation of REDs, the following was highlighted:
 - The possible negative impact of REDs on municipalities – electricity is one of the major sources of income for municipalities who have a constitutional responsibility to provide electricity.
 - The challenge of implementing REDs while taking into consideration the constitutional right of municipalities to provide electricity.
 - The lack of clarity on the role of electricity re-sellers after the implementation of the REDs.
 - The existing problems related to fragmented tariffs.
 - The deterioration of services.
 - The much welcomed attempt to introduce competition at the retail level
 - The lack of competition at the generation level which is likely to frustrate retail level competition

5.3 *Agricultural Co-operatives (Co-ops)*

62. This report:

- examined the evolution of the co-op system both locally and internationally
- investigated the control co-ops often have over key infrastructure / processes in the agri-business chain
- analysed co-op principles against the backdrop of our competition policy
- found that many co-ops have been converted into private companies which now in turn control the key infrastructures previously controlled by co-ops
- emphasised that although co-ops play an important role in the agricultural sector, care should be taken to ensure that their conduct does not fall foul of the Act

5.4 National Payments System & Competition in the Banking Sector

63. In 2004, the Task Team of the National Treasury and SA Reserve Bank released the Falkena Report (the Report on Competition in South African Banking). This report indicated the need for a major research study of the banking industry. In particular, the Falkena Report proposed that we investigate the possibility that the payments system is run by the big banks as a complex monopoly. During the year under review we commissioned a study into the national payment system and competition in the banking sector. This report will be used to evaluate whether any interventions are necessary in this sector. We are now conducting public hearings on this issue.